

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 5:07-cr-17-DCB-JCS-05

JOHN DILLARD

DEFENDANT

ORDER

This cause comes before the Court on Defendant Dillard's Motion to Amend [**docket entry no. 320**] his § 2255 Motion and his Letter Motion [**docket entry no. 334**] requesting that the Court appoint counsel "to represent [him] in the matter of the retroactive of the Fair Sentencing Act."

Under Federal Rule of Civil Procedure Rule 15(1)(A), which is incorporated by Rule 12 Governing Section 2255 Proceedings, Dillard is allowed to amend his § 2255 Motion as a matter of course within 21 days after serving the original pleading. Because Dillard's Motion to Amend was filed within 21 days of filing his original Motion, his Motion to Amend is well-taken and should be granted.¹

As for Dillard's request for counsel, 28 U.S.C. § 2255(g) provides that the appointment of counsel in a § 2255 proceeding is discretionary. The Court of Appeals for the Fifth Circuit has unequivocally stated that the Fair Sentencing Act does not apply retroactively to offenders sentenced before the effective date of

¹ In its response to Dillard's § 2255 Motion, the Government also addresses the arguments raised in his Motion to Amend, explicitly stating that Dillard was within his rights to amend his § 2255 Motion.

the Act. United States v. Doggins, 633 F.3d 379 (5th Cir. 2011). Dillard was sentenced before the Fair Sentencing Act became effective, and therefore, his request that counsel should represent him in making that argument to the contrary is frivolous. As Dillard already has a § 2255 Motion pending in this Court, and his reason for requesting counsel is meritless, the Court denies the Defendant's Motion to Appoint Counsel.

Accordingly,

IT IS HEREBY ORDERED that the Defendant's Motion to Amend Motion to Vacate under 28 U.S.C. § 2255 [**docket entry no. 320**] is **GRANTED**.

IT IS FURTHER HEREBY ORDERED that the Defendant's Letter Motion requesting the appointment of counsel [docket entry no. 334] is **DENIED**.

SO ORDERED AND ADJUDGED, this the _4th_ day of November, 2011.

/s/ David Bramlette

UNITED STATES DISTRICT JUDGE